



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

MARTIN & FERRARO, LLP
1557 LAKE O'PINES STREET, NE
HARTVILLE OH 44632

COPY MAILED

JUL 07 2008

OFFICE OF PETITIONS

In re Application of :
Gary Michelson : DECISION ON APPLICATION
Application No. 09/497,590 : FOR
Filed: June 6, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. 101.0044-03000:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed May 29, 2008. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one thousand one hundred ninety-three (1193) days to one thousand two hundred twenty-one (1221) days.

The application for patent term adjustment is **DISMISSED**.

For the reasons stated herein, the Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one thousand one hundred eighty (**1180**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 18, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 1193 days. On May 29, 2008, applicant timely submitted the instant application for patent term adjustment¹. In effect, applicant contends that the date of mailing of a non-final Office action on August 28, 2006, and not the date of mailing of a final Office action on June 23, 2006, should be used in calculating the Office delay for taking action in excess

¹ PALM records indicate that the Issue Fee payment was also filed on May 29, 2008.

of four months to respond to their response after non-final Office action filed March 31, 2006. On that basis, applicant requests entry of a 28 day period of adjustment for Office delay.

Applicant's argument has been considered, but is not well taken. Pursuant to 37 C.F.R. § 1.702(a)(2),

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

On March 31, 2006, applicant filed a response to a non-final Office action. On June 23, 2006, the Office mailed a final Office action. This was within four months. Thus, no period of adjustment was entered for Office delay pursuant to 37 CFR 1.702(a)(2).

On March 31, 2006, applicant also filed a PETITION UNDER 37 C.F.R. §1.144, requesting modification of the restriction requirement. The examiner construed the petition as a request for reconsideration and in finding petitioner's points of argument persuasive, granted applicant's requests in the non-final Office action mailed August 28, 2006. The examiner's subsequent reconsideration and mailing of a non-final Office action does not negate the fact that the Office first took action in this application within the meaning of § 1.702(a)(2) on June 23, 2006. The mailing of another Office action on August 28, 2006 does not constitute Office delay.

However, a review of the application history reveals that correction of the initial determination of patent term adjustment is required. The review revealed a basis for entry of an additional period of reduction for applicant delay. 37 CFR 1.704(c)(8) provides that:

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in

which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

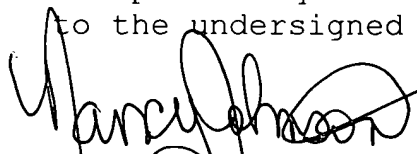
In this instance, after filing a response on June 17, 2007, on June 30, 2007, applicant filed a supplemental response. The record does not support a conclusion that this supplemental response was expressly requested by the examiner. Accordingly, an additional period of reduction of 13 days is being entered for applicant delay pursuant to 37 CFR 1.704(c)(8).

In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one thousand one hundred eighty (1180) days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Wednesday

PALM INTRANETDate: 7/2/2008
Time: 10:21:12**PTA Calculations for Application: 09/497590**

Application Filing Date:	06/06/2000	PTO Delay (PTO):	1321
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	128
Post-Issue Petitions:	0	Total PTA (days):	1180
PTO Delay Adjustment:	-13		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
87	07/02/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		13	
80	03/18/2008	MAIL NOTICE OF ALLOWANCE	166		73
79	08/27/2007	ISSUE REVISION COMPLETED			
78	08/27/2007	DOCUMENT VERIFICATION			
77	08/24/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
76	08/20/2007	NOTICE OF ALLOWABILITY			
75	06/04/2007	NEW OR ADDITIONAL DRAWING FILED			
74	06/07/2007	DATE FORWARDED TO EXAMINER			
73	06/04/2007	RESPONSE AFTER EX PARTE QUAYLE ACTION		18	68
72	06/05/2007	MAIL-PETITION DECISION - DISMISSED			
71	03/31/2006	PETITION ENTERED			
70	05/23/2007	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
69	05/23/2007	DATE FORWARDED TO EXAMINER			
68.1	05/17/2007	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
68	05/17/2007	RESPONSE AFTER EX PARTE QUAYLE ACTION			
67	05/17/2007	NEW OR ADDITIONAL DRAWING FILED			
66	05/01/2007	MAIL EX PARTE QUAYLE ACTION (PTOL - 326)			
65	04/30/2007	EX PARTE QUAYLE ACTION			
64	01/17/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
63	02/22/2007	DATE FORWARDED TO EXAMINER			
62	01/30/2007	SUPPLEMENTAL RESPONSE			
61	01/17/2007	REFERENCE CAPTURE ON IDS			
60.7	01/17/2007	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
60	01/17/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	01/17/2007	NEW OR ADDITIONAL DRAWING FILED			
58	02/02/2007	DATE FORWARDED TO EXAMINER			
57	01/17/2007	RESPONSE AFTER NON-FINAL ACTION		50	53
56	01/17/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
55	10/05/2006	CASE DOCKETED TO EXAMINER IN GAU			
54	08/28/2006	MAIL NOTICE OF WITHDRAWN ACTION			
53	08/28/2006	MAIL NON-FINAL REJECTION			
52	08/22/2006	NON-FINAL REJECTION			
51	08/22/2006	LETTER WITHDRAWING / VACATING OFFICE ACTION			
50	06/23/2006	MAIL FINAL REJECTION (PTOL - 326)			
49	06/08/2006	FINAL REJECTION			
48	03/31/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
47	03/31/2006	REFERENCE CAPTURE ON IDS			
46.7	03/31/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	44
46	03/31/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	04/10/2006	DATE FORWARDED TO EXAMINER			
44	03/31/2006	RESPONSE AFTER NON-FINAL ACTION		30	42
43	03/31/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
42	12/01/2005	MAIL NON-FINAL REJECTION			
41	11/28/2005	NON-FINAL REJECTION			
40	09/17/2005	DATE FORWARDED TO EXAMINER			
39	09/13/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
38	08/24/2005	MAIL RESTRICTION REQUIREMENT			
37	08/22/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
36	05/26/2005	DATE FORWARDED TO EXAMINER			
35	05/12/2005	RESPONSE AFTER NON-FINAL ACTION		30	33
34	05/12/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
33	01/12/2005	MAIL NON-FINAL REJECTION			
32	01/10/2005	NON-FINAL REJECTION			

31	11/04/2004	DATE FORWARDED TO EXAMINER			
30	11/02/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
29	10/04/2004	MAIL RESTRICTION REQUIREMENT	1155		-1
28	10/01/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
27	09/10/2004	PRELIMINARY AMENDMENT			
26	09/10/2004	WORKFLOW INCOMING AMENDMENT IFW			
25	06/02/2004	CLAIMS PTO			
24	06/02/2004	PRELIMINARY AMENDMENT			
23	06/02/2004	WORKFLOW INCOMING AMENDMENT IFW			
22	03/19/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
21	03/17/2004	CLAIMS PTO			
20	03/18/2004	REFERENCE CAPTURE ON IDS			
19	05/01/2002	PRELIMINARY AMENDMENT			
18	06/06/2000	PRELIMINARY AMENDMENT			
17.7	02/16/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	02/16/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16.7	10/06/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	10/06/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15.7	09/22/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	09/22/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	10/01/2003	APPLICATION MADE UNAVAILABLE FOR EXAMINATION			
13.7	06/06/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	06/06/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	06/25/2002	CASE DOCKETED TO EXAMINER IN GAU			
11	04/04/2002	TRANSFER INQUIRY TO GAU			
10	01/23/2002	APPLICATION DISPATCHED FROM OIPE			
9	01/24/2002	APPLICATION IS NOW COMPLETE			
8	06/06/2000	INITIAL EXAM TEAM NN			
7	11/16/2001	MAIL-PETITION DECISION:- GRANTED			

Search Another: Application#

Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | Home page